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May 4, 2004

USCG-2003-14472-30

Docket Management Facility
U.S. Department of Transportation
Room PL-401
400 Seventh Street, S.W.
Washington, D.C. 20590-0001

MARAD-2003-15171-32

Re: Vessel Documentation: Lease Financing for Vessels
Engaged in the Coastwise Trade; Second Rulemaking
(USCG-2003-14472/MARAD-2003-15171)

Dear Sir or Madam:

The American Waterways Operators (AWO) is the national trade association for the inland and coastal tugboat, towboat, and barge industry. The industry AWO represents is the largest segment of the U.S.-flag domestic fleet. It operates some 4000 towing vessels and 28,000 barges, employs more than 30,000 crewmembers, and moves 800 million tons of cargo annually for U.S. shippers. AWO's members are American companies ranging from large public companies to small, multi-generation family businesses. Together, these companies have made a multi-billion-dollar investment in vessels and shoreside infrastructure to serve the U.S. domestic trade in a safe, secure, efficient, and environmentally sound manner.

The basis for that investment, and the statutory foundation of the entire domestic maritime industry, is the Jones Act. **Both the integrity of the Jones Act and the future of the U.S.-controlled domestic maritime industry will stand in jeopardy unless this rulemaking is completed – quickly – as proposed in the February 4 joint notice of proposed rulemaking (NPRM).**

The Coast Guard's February 4 final rule took a major step toward closing the lease financing loophole that has undermined 200 years of U.S. maritime law and policy and blatantly subverted congressional intent, and we appreciate the agency's recognition of the importance of the issues at stake in this proceeding. However, the job is not finished. Unless the Coast Guard and the Maritime Administration take immediate action to resolve the issues raised in the joint NPRM, the lease financing loophole will only have been narrowed, not eliminated. The Jones Act, and U.S. control of the domestic maritime industry, will remain in jeopardy.

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The Maritime Cabotage Task Force (MCTF), of which AWO is a founding member, has submitted detailed comments to this docket, and AWO **endorses the MCTF comments** in their entirety. In brief, AWO joins MCTF in urging the Coast Guard and MarAd to take the following actions to ensure that the lease financing loophole is finally and effectively closed.

First, the Coast Guard should **adopt Alternative 2** (proposed 46 CFR 67.20(a)(9)), which would prohibit arrangements in which a lease-financed vessel is chartered back to the vessel owner or a member of the owner's group of companies except when the vessel is engaged in carrying proprietary cargo for the vessel owner or a member of the owner's group. Unless this change is made, foreign vessel owners will retain the ability to control vessels used in the domestic trade for the carriage of cargo for hire, despite the clearly expressed intent of Congress to prevent such control. **All charter-back arrangements for the carriage of proprietary cargo should be reviewed by the Maritime Administration** to ensure that implementation of this narrow exception to the general prohibition on charter-back arrangements involving lease-financed vessels is administered consistent with congressional and agency intent.

Second, the Coast Guard should **impose a three-year limit on the grandfathering of coastwise endorsements** issued before publication of the February 4 final rule, as specified in proposed 46 CFR 67.20(b). Three years is ample time for a vessel owner to divest or restructure his investments as necessary to ensure compliance with the lease financing regulations.

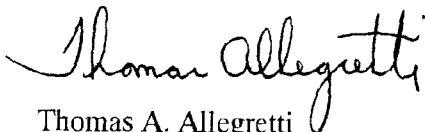
Third, the Coast Guard should ensure that it has the expertise it needs to evaluate whether an application for documentation meets the standards of the regulations in their entirety. The agency should establish a procedure in which applications that meet certain defined criteria are subject to **public notice and comment**. If an application indicates that the applicant is **affiliated with a non-citizen vessel owner or operator**, or that the lease-financed vessel will be **subject to a charter-back arrangement** for the carriage of proprietary cargo, the Coast Guard should publish a notice in the *Federal Register* allowing interested parties a reasonable period of time (say, 45 days) to comment on the application. If the agency's preliminary review indicates that the application passes legal muster, the Coast Guard could issue a certificate of documentation on a provisional basis, retaining the ability to suspend or revoke the document if information to the contrary surfaces during the public comment period. In addition, the Coast Guard should retain the ability to **consult with other government agencies**, such as MarAd, and to **contract with independent private-sector experts** as needed, to ensure that administration of the lease financing regulations is as scrupulous as the seriousness of the subject matter requires.

AWO believes that taken together, adopting these changes will effectively close the lease financing loophole that has gravely weakened the U.S.-ownership pillar of the Jones Act and shaken the entire edifice of the cabotage laws. Much has been made in the course of this policy debate about the potential negative impact of this rulemaking on the small number of foreign-controlled maritime companies that have concluded transactions clearly at odds with the expressed intent of Congress. **We urge the Coast Guard and MarAd to bear in mind the serious, widespread, and long-term negative impact that will accrue to the entire U.S. domestic maritime industry if the changes proposed in the NPRM are not adopted expeditiously.**

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Thank you for the opportunity to comment. We urge the agencies to move immediately to finalize this rulemaking in a way that affirms the integrity of the Jones Act, fulfills the narrow purpose of the 1996 lease financing legislation, and protects the multi-billion dollar-investment that companies like AWO's members have made in reliance on 200 years of U.S. maritime law and policy.

Sincerely,

A handwritten signature in cursive script that reads "Thomas Allegetti". The signature is written in dark ink and is positioned above the printed name.

Thomas A. Allegetti